

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**FROM:** Executive Office

**SUBMITTAL DATE:**  
September 13, 2005

**SUBJECT: Response to the Grand Jury Report: The Office of County Counsel**

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding The Office of County Counsel.
- 2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

**BACKGROUND:** On July 12, 2005, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding The Office of County Counsel.

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

**GARY CHRISTMAS**  
Deputy County Executive Officer

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<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:
<b>SOURCE OF FUNDS:</b>			Positions To Be Deleted Per A-30 <input type="checkbox"/>
			Requires 4/5 Vote <input type="checkbox"/>

**C.E.O. RECOMMENDATION: APPROVE.**

**County Executive Office Signature**

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Wilson and Ashley  
Nays: None  
Absent: None  
Date: September 13, 2005  
xc: E.O., Grand Jury, Co.Co., Presiding Judge, Co.Clk. & Recorder

Nancy Romero  
Clerk of the Board  
  
Deputy

**Prev. Agn. Ref.: 3.9- 7/12/05**

**District:**

**Agenda Number:**

**3 . 5**

Dep't Recomm.: ☐ Policy ☒ Policy  
Per Exec. Ofc.: ☐ Consent ☒ Consent

**OFFICE OF COUNTY COUNSEL**  
**Response To Specific Findings And Recommendations**

**FINDINGS:**

**Number 1:**

Our investigation revealed that "unpermitted" surface mining has been conducted intermittently on a particular property as early as 1984. Aerial photographs provided by Riverside County Flood Control taken in 1984, 1990, 1995 and 2000 confirm that mining continued during the entire period.

- a. The first citations on this property were issued April 6, 1994, including one for illegal surface mining.
- b. On August 17, 1995, the Office of County Counsel signed an agreement with the property owner that surface mining permit would be required in order to continue operations.
- c. On March 18, 1996, an application was filed with the Riverside County Planning Department by the property owner. A permit was never issued because the applicant did not satisfy the requirements outlined in SMARA.
- d. From 1994 to present, multiple citations have been issued to the owner for lack of permits for motocross test tracks, buildings, grading, a landfill, model airplane paved runway and carports.
- e. On May 14, 2002 a meeting was held in a County Board of Supervisor's Office with the property owner, a Deputy County Counsel, a Legislative Assistant to a Riverside County Board of Supervisor, and representatives from Planning and Code Enforcement. The purpose of the meeting was to update and clarify the requirements for the owner to legally continue operations. On September 25, 2002, a Planning Department employee representative hand-delivered detailed requirements to the property owner, which when implemented would bring the property into compliance.
- f. From 2002 to June 2, 2005 the property owner has continued to operate without proper permits. Investigation by the Grand Jury revealed the Office of County Counsel has not enforced compliance as stated in the requirements given to the owner on September 25, 2002.

- g. A grading expert in surface mining estimated that over 30,000 cubic yards of overburden have been removed from the site.
- h. During a Grand Jury interview a Code Enforcement Officer was directed by a Supervisor in Code Enforcement in 2002 to "Lay off the case."

**Response:**

**Respondent disagrees partially with the finding.**

*County Counsel's response to this particular finding involving a pending active case matter must be prefaced by the considerations discussed that immediately follow. This response is governed by, and subject to, the nature of the professional legal obligations inherent in the attorney-client relationship that exists between the Office of County Counsel, the Board of Supervisors and its client agencies.<sup>1</sup> Moreover, there are a host of legal obligations imposed by state law that restrict disclosure of confidential information exchanged and/or developed in the course of an attorney-client relationship, the failure of which to obey may unnecessarily expose the client to liability and subject the attorney member to disciplinary proceedings conducted by the State Bar of California.<sup>2</sup>*

*For example, California Business and Professions Code § 6068(e)(1) provides that it is a duty of an attorney: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." The California Supreme Court in People v. Speedee Oil Change Systems, Inc., 20 Cal. 4<sup>th</sup> 1135, 1146 (1999), examined the underlying rationale in support of attorney-client confidentiality covered in § 6068(e) by stating: "Protecting the confidentiality of communications between attorney and client is fundamental to our legal system. The attorney-client privilege is a hallmark of our jurisprudence that furthers the public policy of ensuring" 'the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice and proper defense.' [Citation.]'" A related provision, California Rules of Professional Conduct – Rule 3-100, provides that an attorney "shall not reveal information protected from disclosure by Business and Professions Code*

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<sup>1</sup> The County Counsel's Office, by statute and by practice, acts as the primary legal advisor to the County Board of Supervisors. In addition to serving as counsel to the Board, attorneys in the County Counsel's Office advise and represent various administrative departments of the County in matters ranging from land use law to social service benefits. The County Counsel's office is also charged with representing special districts, superior court judges, school districts and other local public entities as the need arises. See California Government Code §§ 26529, 27642, 27643, 27645-27647.

<sup>2</sup> California Business and Professions Code § 6068, California Rules of Professional Responsibility, Rule 3-100, California Evidence Code §§ 917, 950-962, California Code of Civil Procedure § 2018.

§ 6068(e)(1)” absent informed consent by the client or where a situation presents itself where the attorney reasonably believes that disclosure is necessary to prevent a criminal act that is likely to result in the death of, or substantial bodily harm to, an individual.

The California Supreme Court in In Re Jordan, 12 Cal. 3d 575, 580 (1974), observed that “the protection of confidences and secrets is not a rule of mere professional conduct, but instead involves public policies of paramount performance which are reflected in numerous statutes. The Jordan court cited as examples the contents of § 6068(e) discussed above as well as pertinent language from California Evidence Code § 952 in determining the propriety of a prison inspection of attorney-inmate mail: “This contention is not persuasive, particularly in light of the broad definition of “confidential communication” set forth in section 952 of the Evidence Code. That section in pertinent part provides: “As used in this article, ‘confidential communication between client and lawyer’ means information transmitted between a client and his lawyer in the course of that relationship . . . and includes a legal opinion formed and the advice given by the lawyer” See In Re Jordan, 12 Cal. 3d at 580. It is significant to note that confidential communications do not lose their privileged character due to the fact of being communicated by electronic means (i.e. e-mail) or in the absence of litigation.<sup>3</sup> See Oxy Resources California LLC v. Superior Court, 115 Cal. App. 4<sup>th</sup> 874, 898 (2004); Wellpoint Health Networks, Inc. v. Superior Court, 59 Cal. App. 4<sup>th</sup> 110, 119-120 (1997); Gordon v. Superior Court, 55 Cal. App. 4<sup>th</sup> 1546, 1557 (1997); and California Evidence Code § 917.

In Fox Searchlight Pictures, Inc. v. Gia Paladino, 89 Cal. App. 4<sup>th</sup> 294, 309 (2001), the Court cited California Evidence Code § 954 in support of the proposition that “every lawyer has a duty in most cases to ‘refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer . . .’” California Evidence Code § 955 reinforces the requirement that “The lawyer who received or made a communication subject to the privilege under this article **shall claim the privilege** whenever he is present when the communication is sought to be disclosed . . .” (emphasis added). The principle of client-lawyer confidentiality also applies to an attorney’s work product material that is defined in California Code of Civil Procedure § 2018(c) as “Any writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories.” The effect of the work product rule creates for the attorney a qualified privilege against discovery of general work product and an absolute privilege against disclosure of writings containing the attorney’s

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<sup>3</sup> The “Background” statement in the Grand Jury’s Report erroneously states that communications, including electronic mail, “between the Office of County Counsel and county agencies and employees only becomes privileged when litigation is involved. Absent litigation, this communication is available to the public.” See 2004-2005 Grand Jury Report entitled “The Office of Riverside County Office”, page no.1.

impressions, conclusions, opinions or legal theories. See Wellpoint Health Networks, Inc. v. Superior Court, 59 Cal. App. 4<sup>th</sup> 110, 120 (1997); American Mutual Liability Ins. Co. v. Superior Court, 38 Cal. App. 3d 579, 593-594 (1974). Finally, it should be noted that the California Attorney General has issued a formal opinion indicating that the lawyer-client privilege and the work-product rule are available to a public entity and its officers in a grand jury proceeding to prevent disclosure of requested confidential information. See, 70 Op. Atty Gen. Cal. 28.

Based on the foregoing discussion of the Office's legal obligations, and taking into particular account the potential prejudicial ramifications that disclosures of confidential information pose to the anticipated resolution of the pending active case, the response to this particular finding must remain limited to the information as stated below.

County Counsel disagrees with the characterization by the Grand Jury that the "Aerial photographs provided by Riverside County Flood Control taken in 1984, 1990, 1995 and 2000 confirm that mining continued during the entire period". However, on the basis of the legal obligations cited above, the Office is unable to respond further.

County Counsel disagrees with the characterization by the Grand Jury that "The first citations on this property were issued April 6, 1994, including one for illegal surface mining." A review of the files in our possession reveals that no citations were issued with regard to the subject property. Instead, it appears that on April 6, 1994, an administrative "Notice of Violation" was issued to two separate business owners with regard to the operation of an illegal wood-chipping business and an illegal machinery repair business located on the subject property. Subsequently, on April 15, 1994, an administrative "Notice of Violation" was issued to the real property owner with regard to the operation of an illegal surface mine.

County Counsel disagrees with the characterization by the Grand Jury that "A permit was never issued because the applicant did not satisfy the requirements outlined in SMARA." This contention has been actively disputed by the property owner in discussions with County staff and, on the basis that it involves a pending active case matter, the Office is unable to respond further.

County Counsel disagrees with the characterization by the Grand Jury that "From 1994 to present, multiple citations have been issued to the owner for lack of permits for motocross test tracks, buildings, grading, a landfill, model airplane paved runway and carports." A review of the files in our possession reveals that no citations were issued with regard to the subject property. Instead, it appears that on April 6, 1994, an administrative "Notice of Violation" was issued to two separate business owners with

regard to the operation of an illegal wood-chipping business and an illegal machinery repair business located on the subject property. Subsequently, on April 15, 1994 and December 17, 2001, an administrative "Notice of Violation" was issued to the real property owner with regard to the operation of an illegal surface mine.

County Counsel disagrees with the characterization by the Grand Jury that "A grading expert in surface mining estimated that over 30,000 cubic yards of overburden have been removed from the site." However, since this involves a pending active case matter and a corresponding duty to maintain client confidentiality, the office is not in a position to divulge details that relate to this area of inquiry.

County Counsel is unaware of the particulars indicated by the Grand Jury that "During a Grand Jury interview a Code Enforcement Officer was directed by a Supervisor in Code Enforcement in 2002 to "Lay off the case." The Office lacks any information or knowledge to substantiate the alleged incident involving staff from the Building & Safety Department. However, the Office regularly advises Code Enforcement staff to treat all enforcement cases in a consistent and fair manner.

**Number 2:**

County Counsel does not have an electronic link to cases currently open in Code Enforcement and the Planning Department.

**Response:**

**Respondent disagrees wholly with the finding.**

Since approximately the year 2000, County Counsel with the assistance of the Building & Safety Department has maintained a number of on-site computer work stations containing a direct electronic link to Code Enforcement case files (both active and closed) stored and referenced on the BS-CE and LMS electronic databases. The number of such electronic links has increased over time such that nearly all County Counsel attorneys and support staff representing Code Enforcement are now directly connected via their individual work stations. Moreover, since approximately June 2005, the Office has also been able to access to the new HANSON electronic database in which Code Enforcement case files are also being stored.

**Number 3:**

Properties, which have been improved, but remain unpermitted, continue to be assessed at a lower tax rate, thus depriving the County of Riverside of increased tax revenue.

**Response:**

**Respondent disagrees partially with the finding.**

*Not all real property improvements require the obtaining of building, grading or land use permits (ex: landscaping, flat work such as walkways and some driveways, certain fences or walls, etc.) and therefore do not easily trigger reassessment resulting in a higher assessed real property value. Moreover, other real property that has been illegally improved without benefit of required building or grading permits may not ultimately yield a higher assessed value where zoning or other land use restrictions intrude to prohibit such construction in the first place and thereby prevent permitting from taking place.*

**Number 4:**

A review was conducted of random case files of properties that had been abated without the benefit of a lawful Seizure Warrant. A correspondence was discovered in which a Deputy County Counsel was advising a Code Enforcement Officer how to prevent the property owner from learning what happened and how to carry out damage control options.

**Response:**

**Respondent disagrees partially with the finding.**

*County Counsel's response to this particular finding must be prefaced by the same legal considerations discussed in the response to the first finding referenced above, because it involves potential liability exposure to the County of Riverside.*

*In addition to the legal authorities previously cited, it must be also noted that California Business and Professions Code § 6068(c) and California Rules of Professional Conduct – Rule 3-110 mandate that an attorney act competently in providing legal services, including the provision of legal advice. "We recognize that an attorney owes a basic obligation to provide sound advice in furtherance of a client's best interests," Davis v. Damrell, 119 Cal. App. 3d 883, 889 (1981).*

California courts have stated that an attorney has a duty of loyalty to a client and that the attorney violates this fiduciary duty when he or she assumes a position inconsistent with the interests of the client. See Fox Searchlight Pictures, Inc. v. Gia Paladino, 89 Cal. App. 4<sup>th</sup> 294, 301 (2001); Zador Corporation v. Kwan, 31 Cal. App. 4<sup>th</sup> 1285, 1293 (1995). The California Supreme Court has stated "Attorneys have a duty to maintain undivided loyalty to their clients to avoid undermining public confidence in the legal profession and the judicial process. [citations omitted]. The effective functioning of the fiduciary relationship between attorney and client depends on the client's trust and confidence in counsel." See People v. Speedee Oil Change Systems, Inc., et.al., 20 Cal. 4<sup>th</sup> 1135, 1146 (1999). On the other hand, no duty is owed by an attorney to protect the interests of an adverse party "for the obvious reasons that the adverse party is not the intended beneficiary of the attorney's services, and that the attorney's undivided loyalty belongs to the client." (emphasis added) See Fox v. Pollack, 181 Cal. App. 3d 954, 961 (1986).

Based on the foregoing discussion of the Office's legal obligations, and taking into particular account the potential liability exposure that disclosures of confidential information pose to the County, the response to this particular finding must remain limited by the Respondent to the information as stated below.

County Counsel disagrees with the characterization by the Grand Jury that the "A review was conducted of random case files of properties that had been abated without the benefit of a lawful Seizure Warrant." However, on the basis of the legal concerns referenced above, the Office is unable to respond further.

County Counsel disagrees that the attorney-client privileged correspondence in question, which should not have been disclosed, reflected anything other than the provision of competent legal advice containing several options from which the client representative with the Building & Safety Department could properly choose. It follows from the law cited above that this Office has no duty to protect the interests of an adverse party, such as the code violation defendant in this matter. Nor would this Office be required under California law to affirmatively disclose confidential information potentially damaging to the client's interests. On the contrary, such a disclosure would be expressly prohibited under California law and the Rules of Professional Conduct. Moreover, such disclosure would subject County taxpayers to potential liability exposure and would violate the attorney's fiduciary duties of confidentiality and loyalty to the client.



## **RECOMMENDATIONS:**

### **Number 1:**

The Office of County Counsel must expedite cases in Code Enforcement and Planning as established by Board of Supervisors' Policy A-57 (Attachment 1). When the Office of County Counsel negotiates an agreement with the property owner, staff must follow through to ensure that the terms of the agreement are strictly enforced.

### **Response:**

**The recommendation will not be implemented because it is not warranted or is not reasonable.**

*The Grand Jury's recommendation is based on an incorrect interpretation that Policy A-57 is somehow applicable to the Office of County Counsel. A summary review of the policy indicates that it is intended to "provide policy guidelines for development departments to ensure the timely review of application materials for commercial and industrial uses". The policy goes on to indicate that the participating departments comprise the membership of an "Unauthorized Business Review team" consisting "of a representative from the Planning Department, Department of Building & Safety, and, when the unauthorized use is located in a Redevelopment Area, the Economic Development Agency." Nowhere in the policy is there any reference to the Office. It should also be noted that even if Policy A-57 were hypothetically applicable to the Office, flexibility exists in the form of Board Policy A-1 which provides in pertinent part: "The Board of Supervisors policies set forth in this manual are general in nature and are not intended as rigid rules or regulations from which there may be no deviation." The complexity of some code enforcement matters similarly necessitates a corresponding degree of flexibility (as opposed to a strictly rigid approach) when approaching the execution of an agreement and measuring the related performance of a party property owner.*

### **Number 2:**

The Office of County Counsel implement an electronic link from Code Enforcement and Planning Department to its office to provided oversight for legal enforcement on cases that have continued for an extended period of time.

### **Response:**

**The recommendation will not be implemented because it is not warranted or is not reasonable.**

*The Grand Jury's recommendation is an excellent one. However, the Grand Jury should be aware that such an electronic link has existed for the past five years. Beginning in approximately 2000, the Office with the assistance of the Building & Safety Department has maintained a number of on-site computer work stations containing a direct electronic link to Code Enforcement case files (both active and closed) stored and referenced on the BS-CE and LMS electronic databases. The number of such electronic links has increased over time such that nearly all County Counsel attorneys and support staff who represent Code Enforcement are now directly connected via their individual work stations. Moreover, since approximately June 2005, the Office also now has access to the new HANSON electronic database in which Code Enforcement case files are also being stored so that Building & Safety Department supervisors and managers can better manage the Department's workload.*

**Number 3:**

The Office of County Counsel must identify and bring into compliance improved properties that remain unpermitted and have not been reassessed. Assessment at a higher value will generate more tax revenue to the County of Riverside.

**Response:**

**The recommendation will not be implemented because it is not warranted or is not reasonable.**

*The Grand Jury's recommendation is based upon a premise that the Office of County Counsel is organized and staffed to act as a law enforcement agency to identify noncompliant properties and remedy those violations rather than being organized and staffed to fulfill its statutorily defined role in acting as the primary legal advisor to the County Board of Supervisors, as well as advising County administrative departments, special districts, superior court judges, school districts and other local public entities as the need arises. See California Government Code §§ 26529, 27642, 27643, 27645-27647. On the contrary the Code Enforcement Division of the Department of Building and Safety is responsible to utilize its enforcement staff for the purpose of identifying and remedying county ordinance violations.*

**Number 4:**

The primary duty of the Office of County Counsel is to provide legal advice to the County and its agencies. They must also exercise their responsibility to third parties as set forth in the California Rules of Professional Responsibility.

**Response:**

**The recommendation will not be implemented because it is not warranted or is not reasonable.**

*The Grand Jury's recommendation is a sensible one. It is helpful for the Grand Jury to know that the Office of County Counsel has acted, and continues to do so, in its statutorily defined role in acting as the primary legal advisor to the County Board of Supervisors, as well as advising County administrative departments, special districts, superior court judges, school districts and other local public entities as the need arises. See California Government Code §§ 26529, 27642, 27643, 27645-27647. The Office similarly has exercised, and continues to do so, appropriate responsibility when dealing with third parties as called for under state law with regard to the duties of an attorney. The Office must carefully adhere to an attorney's fiduciary duties of confidentiality and loyalty to the client when dealing with third parties that are being prosecuted for ordinance violations.*